

EASTMAN & SMITH LTD.

ATTORNEYS AT LAW

Established 1844

Joseph A. Gregg
Attorney at Law
Direct Dial: 419 247 1657
jagregg@eastmansmith.com

One SeaGate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699-0032
Telephone: 419-241-6000
Facsimile: 419-247-1777

June 8, 2021

Via Email Only

Margo Ludmer, Esq.
Ludmer.margo@epa.gov
Assistant Regional Counsel
New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2

**Re: Response of Carrier Corporation to Notice of Potential Liability and
Request to Perform Remedial Activities for the Lower Ley Creek
Operable Unit of the Onondaga Lake Superfund Site, Onondaga County,
New York
Our File No: C096/190933**

Dear Ms. Ludmer:

Our client, Carrier Corporation ("Carrier"), is in receipt of the above-captioned undated correspondence from Eric Wilson, Deputy Director for Enforcement and Homeland Security Superfund and Emergency Management Division. In that correspondence, Mr. Wilson gives an abbreviated history of the Lower Ley Creek Operable Unit ("OU") of the Onondaga Lake Superfund Site, notifies Carrier that US EPA still considers the company to be a Potentially Responsible Party (PRP) with respect to the OU and requests that Carrier perform the Remedial Action ("RA") for the remedy selected for this OU. As you are aware, Carrier and five other Potentially Responsible Parties ("PRPs") are currently in the process of performing Remedial Decision ("RD") activities at the Lower Ley Creek OU, which RD work is expected to conclude sometime in the summer of 2022.

In Frank Pavia and my recent discussion with you and Jim Doyle we discussed the agency's thinking with respect to the timing of this general notice letter and the draft Consent Decree/SOW. As a result of that discussion, our understanding is that the agency believes enough is known about what the ultimate remedy will be for the Lower Ley Creek OU that discussions can now commence regarding an RA Consent Decree. In light of the length of time it took the parties to negotiate the RD Administrative Order on Consent ("AOC"), we do not disagree with the need to start early.

Columbus

•

Detroit

•

Findlay

•

Toledo

eastmansmith.com

Carrier is willing to negotiate in good faith with EPA concerning the performance of the Lower Ley Creek OU RA, with EPA oversight. Its ability to ultimately enter into such a Consent Decree, however, must be qualified at this time. Such qualifications include, *inter alia*, (a) assuring that a sufficient number of other PRPs agree to enter into such a Consent Decree to perform the RA, including, without limitation, certain PRPs not currently participating in the RD (b) that funds available in the Lower Ley Creek OU special account from the GM bankruptcy dedicated to funding the performance of the remedy at the Lower Ley Creek OU be available to the Respondents participating in the RA at appropriate intervals and (c) that the RA for the Lower Ley Creek OU follow the RA for the upstream Ley Creek Deferred Media OU and otherwise be coordinated with it. In prior correspondence with your predecessor, Lauren Charney, we expressed a number of other reservations about Carrier's liability for and participation in the Superfund clean-up process and otherwise with respect to the site. All of those issues and qualifications remain in place and are incorporated herein by reference.

Carrier and the other members of the Joint Defense Group have regularly requested that the EPA assist them by identifying additional PRPs with respect to the site and issuing general notice letters to them. To date, EPA has declined to do so, even though we have previously supplied the agency with nexus packages that contain information at least as strong as that purporting to connect current members of the Joint Defense Group to the site. We continue to renew our request in this regard.

Among the numerous other "moving parts" of this project, the issue of local disposal of excavated sediments and soils is paramount. As we stated to you in our recent call, the participating members of the Joint Defense Group who are performing the RD have already begun those negotiations. Members of the Joint Defense Group will be working with the Town of Salina and any other local disposal source over the course of this summer in an attempt to conclude negotiations of a local disposal agreement(s) by sometime this Fall. We will endeavor to provide the agency with regular updates regarding the progress of those negotiations. When that is in place and the RD is more completely developed, we will commence actual negotiations of the draft Consent Decree with your office.

Carrier is a participating member of that Joint Defense Group and intends to continue as such. It is anticipated that it will be a member of any future such group that is responsive to the RA Consent Decree.

Carrier's agreement to enter into negotiations with the agency in this fashion is without admission of fault or liability, and this correspondence constitutes a denial of same.

Margo Ludmer, Esq.
June 8, 2021
Page 3

Please don't hesitate to give me a call with questions, comments, or concerns regarding the above.

Very truly yours,

EASTMAN & SMITH LTD.

A handwritten signature in black ink, appearing to read "Joe A. Gregg". The signature is fluid and cursive, with a large initial "J" and a stylized "A".

Joseph A. Gregg

JAG/dll

cc: Ms. Victoria Sacks (via email – sacks.victoria@epa.gov)
Counsel for other members of the RD Joint Defense Group